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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,795

08/15/2006

Karl Schermanz

16785.1

6850

22913

7590

01/21/2010

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EXAMINER

DARJI, PRITESH D

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

01/21/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,795	<b>Applicant(s)</b> SCHERMANZ ET AL.	
	<b>Examiner</b> PRITESH DARJI	<b>Art Unit</b> 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-24 is/are rejected.
- 7) ☒ Claim(s) 21-24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/9/2009 has been entered.

### ***Claim Objections***

Claims 21,23 are objected to because of the following informalities:

In claims 21 and 23, "70 wt.-%", "5-20wt.-%" and "15 wt.-%" are objected with incorrect "hyphen" use.

Appropriate correction is required.

Claims 21 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 23. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

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Claim 22 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 24. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 21 and 23, “at least one rare earth metal selected from the group of ... and Yb ” is improper Markush language and thus indefinite. See MPEP 2173.05(h) I.

In claims 21,23, “REVO4” is indefinite as to what "RE" stands for in the formula.

In claim 22, “a catalyst composition obtainable” is indefinite as to whether or not it is obtained.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleemann (Investigation of... analysis) in view of Reddy (Surface... Techniques).

Kleemann teaches a process for preparation of a catalyst composition in which monolithic cordierite honeycomb was immersed in the suspension of  $\text{TiO}_2$  with 9%  $\text{WO}_3$ . Since there is not any other component present in the suspension, 91 wt%  $\text{TiO}_2$  is present in the suspension. It is obvious that slurry is formed because  $\text{TiO}_2$  and  $\text{WO}_3$  are powders and their presence in the suspension would form slurry. After impregnation sample is dried and it is impregnated with  $\text{NH}_4\text{VO}_3$ . Sample is dried and calcined. See 2. Experimental, 2.1. Absence of  $\text{SiO}_2$  makes its wt% 0, therefore the limitation is met.

Kleemann does not teach that  $\text{REVO}_4$  is contacted with the  $\text{TiO}_2$  and  $\text{WO}_3$ .

Reddy teaches method of preparing  $\text{V}_2\text{O}_5/\text{CeO}_2/\text{SiO}_2$  catalysts in which vanadium oxide with ammonium metavanadate ( $\text{NH}_4\text{VO}_3$ ) is dissolved in aqueous oxalic acid. Then powdered support is added. The resulting material was dried and calcined. See Experimental Section, para 2. Calcining the resultant at 973K resulted in the formation of  $\text{CeVO}_4$ . See pg 10967, col. 1, lines 1-12. Therefore the formation of  $\text{CeVO}_4$  occurs in the process. In the process powdered support materials are added as well so they are in contact with the formed  $\text{CeVO}_4$ .

It would have been obvious for a person with ordinary skills in the art at the time of the invention to use process of Kleemann including using vanadium oxide with  $\text{NH}_4\text{VO}_3$  and aqueous acid in view of Reddy to make the catalyst which includes  $\text{CeVO}_4$  because the combination of vanadia (known for its redox properties) and ceria (known

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for its oxygen storage and release functions) gives rise to a catalyst system that may catalyze extraneous redox reactions for both selective and non-selective oxidation. See pg 10965, col. 1, lines 2-18.

Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art the burden of proof is shifted to the applicant to establish that their product is patentably distinct not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685, *In re Fessmann*, 180 USPQ 324, *In re Spada*, 15 USPQ2d 1655, *In re Fitzgerald*, 205 USPQ 594 and MPEP 2113.

### ***Response to Arguments***

Applicant has filed Declaration on 11/09/2009 under 37 CFR 1.132, which is fully considered and persuasive.

Applicant's arguments with respect to instant claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PRITESH DARJI whose telephone number is (571)270-5855. The examiner can normally be reached on Monday to Thursday 8:00AM EST to 6:00PM EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. D./

Examiner, Art Unit 1793

/Steven Bos/

Primary Examiner, Art Unit 1793